

60,427-371
2001P08244US01**REMARKS**

Applicant thanks the Examiner for the remarks and analysis contained in the Office Action. Claims 1, 8 and 14 are amended above. Applicant respectfully requests reconsideration where claims 1-20 are currently pending.

Applicant respectfully traverses the rejection of claims 1, 2, 8-11, 14 and 17 under 35 U.S.C. §102(e) as being anticipated by *Lambrecht*. That reference does not have anything to do with providing an audible engine profile. Instead, the *Lambrecht* reference is focused on noise cancellation of background noise is an airplane, for example. Moreover, the noise cancellation technique of *Lambrecht* is intended to result in a DC signal, which is not audible as expressly stated in the *Lambrecht* reference in several places. Therefore, there is no anticipation.

Applicant respectfully traverses the rejection of claims 1, 8-10 and 14 under 35 U.S.C. §103 based upon the proposed combination of *Fuesser, et al.* in view of *Gifford, et al.* There is no *prima facie* case of obviousness. There is no motivation from within the references for making the combination proposed by the Examiner. It appears that the only basis for combining the references is hindsight reasoning based upon Applicant's disclosure and claims.

Before addressing the reasons why there is no *prima facie* case, Applicant notes that the *Fuesser, et al.* U.S. Patent Number 6,688,422 does not qualify as prior art against Applicant's invention. Applicant notes that the published PCT application or the published version of the German priority application may qualify as prior art under 35 U.S.C. §102(a). So that the record is clear, Applicant respectfully requests that the Examiner indicate exactly what is being relied upon for the rejection. In the event that

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one of the German documents is being relied upon, Applicant requests that the Examiner obtain a translation to ensure that the German document contains the subject matter that the Examiner is relying upon for making the rejection under 35 U.S.C. §103.

Assuming that there is correspondence between the German language documents and the United States Patent No. 6,688,422, there still is no *prima facie* case of obviousness. The *Fuesser, et al.* reference is intended to provide a noise cancellation system that allows for hearing some noises to facilitate gear shifts, for example. "In certain operating stages, the driver needs the acoustic information coming from the internal combustion engine for such purposes as to select the correct point at which to change gears during mentioned operation. Consequently, a consistent minimization of the intake noise across the entire engine speed range of the internal combustion engine would provide the driver with an inaccurate picture of engine characteristics, resulting in improper loading of the internal combustion engine and therefore increased fuel consumption." (Column 1, line 65 – column 2, line 7).

The *Fuesser, et al.* reference then describes a "reference noise" that represents the sound that can be heard at such times as when a gear shift may be desired. The *Fuesser, et al.* reference teaches that the reference noise is "determined dependent on the engine speed of the internal combustion engine." (Column 4, line 20). Further, the *Fuesser, et al.* reference teaches that "The frequency of the correcting noise is directly dependent on the engine speed of the internal combustion engine." By controlling the reference noise based on engine speed, the *Fuesser, et al.* reference controls the frequency of the correcting noise.

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The *Gifford, et al.* reference does not teach exactly what the Examiner states in the Office Action. Instead, that reference teaches that the human interface circuit 925 basically allows a user to “switch between alternative modes of operation, e.g., continuously change the cancelled frequencies throughout operation, or alternatively to select the cancelled frequencies or frequency multiples when the system is first enabled and thereafter retain the selection throughout operation. By toggling the appropriate switch, the user may indicate the proper mode of frequency selection.” (Column 8, line 66 – column 9, line 5).

There is no motivation for combining the teachings of *Gifford, et al.* and the *Fuesser, et al.* reference because the *Fuesser, et al.* reference already uses engine speed for controlling the reference noise. The frequency associated with the correcting noise is directly dependent on the engine speed which the *Fuesser, et al.* reference already utilizes. The *Gifford, et al.* reference suggests an arrangement where different frequencies can be selectively cancelled. Because the *Fuesser, et al.* reference already controls a correcting noise frequency, adding the teachings of the *Gifford, et al.* reference does not provide any benefit. The reference noise of the *Fuesser, et al.* reference is already determined dependent on engine speed, which has a relationship to the frequency of the correcting noise. It is not possible, therefore, to combine the selected frequency correction feature of *Gifford, et al.* with the teachings of *Fuesser, et al.* In other words, there is no motivation for making the combination because there is no benefit to making it. Additionally, it creates the possibility that a user may interfere with appropriate development of the reference noise that is required by the *Fuesser, et al.* reference to

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achieve its objectives. A proposed modification that provides no benefit or that interferes with operation of a system in a primary reference cannot be made.

Further, the *Gifford, et al.* reference teaches in column 7, lines 59-67 that the control circuit 900B of which the human interface 925 is a part, is for generating an independent frequency signal so that the tunable band pass filters of *Gifford, et al.* that "permit cancellation of signals that are unrelated to engine speed" may be controlled. Based on that teaching, *Gifford, et al.* cannot be interpreted to provide the type of selection suggested by the Examiner in the Office Action. Instead, the *Gifford, et al.* reference provides some tunable band pass filter control that, according to *Gifford, et al.*'s own teachings, is unrelated to engine speed. Since *Fuesser, et al.* controls the reference noise dependent on engine speed, there is no compatibility between the human interface of *Gifford, et al.* and the technique of *Fuesser, et al.* In other words, adding the teachings of *Gifford, et al.* to *Fuesser, et al.* does not provide any benefit and, therefore, the legally required motivation for making the combination is absent. There is no *prima facie* case of obviousness.

Applicant respectfully traverses the rejection of claims 2-7, 11-13 and 15-20 based upon the proposed combination of *Fuesser, et al.*, *Gifford, et al.* and *Witkowski, et al.* The base combination of *Fuesser, et al.* and *Gifford, et al.* cannot be made as described above. The proposed addition of the teachings of *Witkowski, et al.* does not remedy the defect in the base combination. There is no motivation for making the proposed combination and no *prima facie* case of obviousness.

Applicant respectfully submits that this case is on condition for allowance. If the Examiner believes that a telephone conference will facilitate moving this case forward to

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being issued, Applicant's representative will be happy to discuss any issues regarding this application and can be contacted at the telephone number indicated below.

Respectfully submitted,

CARLSON, GASKEY & OLDS

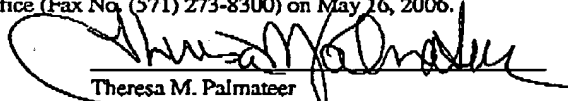
By: 

David J. Gaskey
Registration No. 37,139
400 W. Maple Rd., Ste. 350
Birmingham, MI 48009
(248) 988-8360

Dated: May 16, 2006

CERTIFICATE OF FACSIMILE

I hereby certify that this Response, relative to Application Serial No. 10/092,076, is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on May 16, 2006.


Theresa M. Palmateer

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